IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

Crl.MC.No. 1029 of 2007()

CRIME NO.64/2007 KUTTIPPURAM POLICE STATION

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PETITIONERS: 1ST ACCUSED

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1. SAMEER, S/O.ALAVI,
VELUTHAPARAMBIL HOUSE,
BANGLAM KUNNU, KUTTIPPURAM,
MALAPPURAM DISTRICT.

2. SREEJITH ALIAS JITHU,
S/O.ARAMUGHAN, EDASSERIPPADI,
BANGLAM KUNNU, KUTTIPPURAM,
MALAPPURAM DISTRICT.

3. RAVI, S/O.THAMI,
KOLOTHUPARAMBU HOUSE,
BANGLAM KUNNU, KUTTIPPURAM,
MALAPPURAM DISTRICT.

4. NARAYANAN ALIAS ANOOP,
S/O.SANTHA, ERAKKINGAL HOUSE,
BANGLAM KUNNU, KUTTIPPURAM,
MALAPPURAM DISTRICT.

5. VIPIN, S/O.SRINIVASAN,
PAMPAN HOUSE,
BANGLAM KUNNU, KUTTIPPURAM,
MALAPPURAM DISTRICT.

6. LALU ALIAS SREEJITH,
S/O.VIJAYAN, PAMPAN HOUSE,
BANGLAM KUNNU, KUTTIPPURAM,
MALAPPURAM DISTRICT.

7. SANTHOSH, S/O.KRISHNAN,
MAYAPPANCHAL HOUSE,
BANGLAM KUNNU, KUTTIPPURAM,
MALAPPURAM DISTRICT.

BY ADV. SRI.T.KRISHNAN UNNI
SRIC.M.MOHAMMED IQUABAL

RESPONDENTS:COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
KUTTIPPURAM POLICE STATION.
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1029 of 2007

Dated this the 29th day of March 2007

O R D E R

The petitioners are accused, against whom crime No.64/2007 of Kuttippuram police station has been registered for offences punishable interalia under Section 3(1)(X) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act and Section 324 read with 149 I.P.C. The crime was registered on 12/03/2007. Investigation is in progress. The petitioners have rushed to this court with this petition to invoke the powers under Section 482 Cr.P.C and quash the said F.I.R registered against them.

2. Admittedly, an incident has taken place at or near a public road regarding which, allegations and counter allegations are raised by the rival contestants and a crime and a counter crime have been registered by the police. Investigation is in progress in both the crimes. The petitioners pray that the extraordinary inherent jurisdiction available to this court under Section 482 Cr.P.C may be invoked to quash the proceedings. The jurisdiction which is sought to be invoked is an

extraordinary inherent jurisdiction. The same cannot be invoked as a matter of course. Compelling reasons must be shown to exist to justify resort to such extraordinary powers.

3. What are the reasons? The learned counsel for the petitioner urges two reasons. First of all, it is pointed out that some of the accused persons are members of the scheduled caste/Scheduled Tribe and in these circumstances Section 3 can have no application to such accused. Secondly, it is pointed out that the incident which taken place cannot be said to have taken place in public view. These are the two contentions urged.

4. Some of the accused persons are admittedly not persons belonging to the Scheduled Caste/Scheduled Tribe. The allegations are raised about an incident which had taken place in front of a hotel by the side of the public road. I must, in a matter like this, very scrupulously avoid any expression of opinion on merits which is likely to prejudice the interests of the parties at later stages. Suffice it to say that on an anxious consideration of all the relevant materials, I am not persuaded to agree that the extraordinary inherent jurisdiction deserves to be invoked in a case like the instant one. It is for the investigator to conduct a proper investigation and come to appropriate

conclusions. Definitely, the investigating officer will have to very seriously consider whether the allegations raised against the petitioners under Section 3 of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) is maintainable as they or some of them atleast, are members of the Scheduled Caste/Scheduled Tribe.

5. The learned counsel for the petitioners submits that the petitioners face a very unfortunate predicament in view of Section 18 of the Act. They cannot seek anticipatory bail. The offence is triable exclusively by a court of Session. The learned Magistrate is not also likely to consider their application for bail on merits. In these circumstances, appropriate directions may be issued, it is finally prayed. I find no merit in the contention that the learned Magistrate may not consider their application for bail on merits. This court has repeatedly held that the mere fact that the offence under Section 3 of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) is triable exclusively by a court of Session will not justify abdication of jurisdiction by the learned Magistrate to consider an application for bail on merits and pass appropriate orders. The petitioners shall be entitled to surrender before the learned Magistrate and

seek regular bail. The learned Magistrate, needless to say, must consider such application for bail on merits, in accordance with law and in the light of the decision in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339] and Ali v. State of Kerala [2000(2) KLT 280, Shanu v. State of Kerala [2000(3) KLT 452, Krishnakumar v. State of Kerala [20005(1) KLD(Cri.)42] and P.P.Kader v. State of Kerala [2005(1) KLD(Cri.)250] . But I may hasten to observe that if the petitioners surrender before the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself. This petition is accordingly dismissed with the above observations.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006